

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands)	IB Docket Nos. 05-220 & 05-221
)	
)	
Inmarsat Global Limited)	File Nos. SAT-PDR-20050926-00184
Petition for Declaratory Ruling to Provide Mobile)	SAT-AMD-20051116-00221
Satellite Service to the United States Using the)	
2 GHz and Extended Ku-Bands)	
)	

OPPOSITION TO PETITION FOR RECONSIDERATION

Cheryl A. Tritt
Phuong N. Pham
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006

Suzanne Hutchings Malloy
Senior Regulatory Counsel
815 Connecticut Avenue, N.W.
Suite 610
Washington, D.C. 20006

Counsel to New ICO Satellite Services G.P.

Date: February 16 , 2006

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	1
II. THE COMMISSION’S PUBLIC INTEREST FINDINGS IN THE 2 GHz ORDER ARE FULLY SUPPORTED BY THE RECORD	2
A. The Commission Properly Found That Increasing ICO’s and TMI’s Spectrum Assignments Will Facilitate Services to First Responders and Rural Areas.....	3
B. The Commission Properly Found That ICO and TMI Will Deploy 2 GHz MSS Spectrum More Quickly Than Others	4
C. The Commission Properly Found That Increasing ICO’s and TMI’s Spectrum Assignments Will Facilitate MSS Competition.....	6
III. THE COMMISSION FAIRLY CONSIDERED INMARSAT’S PROPOSED ALTERNATIVES AND, IN ANY EVENT, IS NOT REQUIRED TO CONSIDER ALL POSSIBLE ALTERNATIVES.....	10
IV. GLOBALSTAR AND INMARSAT LACK STANDING TO OPPOSE MODIFICATION OF ICO’S AND TMI’S SPECTRUM RESERVATIONS	11
V. CONCLUSION	13

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Use of Returned Spectrum in the 2 GHz Mobile)	IB Docket Nos. 05-220 & 05-221
Satellite Service Frequency Bands)	
)	
Inmarsat Global Limited)	File Nos. SAT-PDR-20050926-00184
Petition for Declaratory Ruling to Provide Mobile)	SAT-AMD-20051116-00221
Satellite Service to the United States Using the)	
2 GHz and Extended Ku-Bands)	

OPPOSITION TO PETITIONS FOR RECONSIDERATION

I. INTRODUCTION AND SUMMARY

Pursuant to Section 1.106(g) of the Commission's rules, 47 C.F.R. § 1.106(g), and the Commission's public notice published in the Federal Register on February 1, 2006,¹ New ICO Satellite Services G.P. ("ICO") opposes the petitions ("Petitions") of Globalstar and Inmarsat for reconsideration² of the *2 GHz Order*.³ Contrary to Globalstar's and Inmarsat's contention, the Commission's decision in the *2 GHz Order* to divide the returned 2 GHz mobile satellite service ("MSS") spectrum between ICO and TMI is reasonable and supported by the record.

¹ See *Petitions for Reconsideration of Commission Action*, 71 Fed. Reg. 5339 (Feb. 1, 2006).

² See Consolidated Petition for Reconsideration of Inmarsat Ventures Limited and Inmarsat Global Limited (collectively, "Inmarsat"), IB Dkt. Nos. 05-220 & 05-221 (Jan. 9, 2006); Petition of Globalstar for Reconsideration, IB Dkt. Nos. 05-220 & 05-221 (Jan. 9, 2006). All filings submitted in this proceeding hereinafter will be short-cited. Comments and replies filed in response to the *First 2 GHz MSS Public Notice*, 20 FCC Rcd 12231 (2005), will be referred to as "First Comments" or "First Reply." Comments and replies filed in response to the *Second 2 GHz MSS Public Notice*, 20 FCC Rcd 12234 (2005), will be referred to as "Second Comments" or "Second Reply."

³ See *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, FCC 05-204 (Dec. 9, 2005) ("*2 GHz Order*").

Specifically, the Commission properly found that assigning all of the available 2 GHz MSS spectrum to ICO and TMI will facilitate services to first responders and rural areas, and will do so much more quickly than assigning the spectrum to other parties. The Commission also properly concluded that assigning all of the available 2 GHz MSS spectrum to ICO and TMI will enhance MSS competition, rather than create a duopoly.

Furthermore, both Globalstar and Inmarsat failed to demonstrate the requisite standing or to file a timely protest against the Commission's modification of ICO's and TMI's 2 GHz MSS spectrum reservations, as required by Section 316 of the Communications Act of 1934, as amended ("Communications Act"). Consequently, the Commission should dismiss the Petitions as procedurally defective or deny the Petitions on their merits, and promptly reaffirm the *2 GHz Order*.

II. THE COMMISSION'S PUBLIC INTEREST FINDINGS IN THE 2 GHz ORDER ARE FULLY SUPPORTED BY THE RECORD

Notwithstanding their procedural deficiencies, the Petitions fail to offer any valid ground for reversing or modifying the *2 GHz Order*, and instead seek to distort and mischaracterize the basis for the Commission's decision to divide the returned 2 GHz MSS spectrum between ICO and TMI. The Commission's decision was based on its determination that the resulting increase in ICO's and TMI's spectrum assignments would serve the public interest by (1) "better enabling them to provide crucial communications services during times of national emergencies, and to offer rural broadband services;" (2) allowing them "to bring the spectrum into use more quickly ... than would be possible if the spectrum were assigned to another party;" and (3) allowing them

“to compete more effectively with other MSS competitors.”⁴ Contrary to Globalstar’s and Inmarsat’s contention, these public interest findings are fully supported by the record.

A. The Commission Properly Found That Increasing ICO’s and TMI’s Spectrum Assignments Will Facilitate Services to First Responders and Rural Areas

In concluding that increasing ICO’s and TMI’s spectrum assignments would better enable them to offer service during times of national emergencies, the Commission relied upon the strong support by the public safety organizations that participated in the proceeding.⁵ The Commission recognized that these first responders are best qualified to assess their own communications needs. Thus, the Commission reasonably found that the first responders’ overwhelming support for redistributing the available 2 GHz MSS spectrum to ICO and TMI provided “compelling” evidence that the redistribution would serve public safety needs.⁶

Additionally, the Commission noted that a number of parties, including Globalstar and Inmarsat, supported assigning additional spectrum to 2 GHz MSS systems because the additional spectrum would facilitate deployment of broadband services to first responders and to rural areas.⁷ In its Petition, however, Globalstar now makes the astonishing claim that “there is absolutely no requirement” that ICO and TMI serve any rural areas.⁸ As a former 2 GHz MSS licensee, Globalstar should be well aware that Section 25.143(b)(2)(iv) of the Commission’s rules requires ICO’s and TMI’s geostationary MSS systems to be capable of providing service to

⁴ 2 GHz Order ¶ 26 (citations omitted).

⁵ See *id.* ¶ 28.

⁶ *Id.*

⁷ *Id.* ¶ 29 (citing Globalstar Second Reply at 6-7; Inmarsat First Comments at 7-10; Inmarsat Second Reply at 17-22).

⁸ Globalstar Petition at 9.

the entire United States, including rural areas.⁹ Any suggestion that ICO or TMI will not offer service to rural areas or otherwise comply with the nationwide coverage requirement of Section 25.143(b)(2)(iv) is pure speculation.

B. The Commission Properly Found That ICO and TMI Will Deploy 2 GHz MSS Spectrum More Quickly Than Others

Neither Globalstar nor Inmarsat offers any evidence to refute the Commission's finding that assigning additional 2 GHz MSS spectrum to ICO and TMI would ensure that the spectrum would be brought into use more quickly than if the spectrum were assigned to others. In fact, Globalstar and Inmarsat do not dispute either of the following critical facts established in the record: (1) assigning additional 2 GHz MSS spectrum to ICO is the *only* option that will ensure that, by 2007, the spectrum will be brought into use and broadband services will be delivered to first responders and rural areas;¹⁰ and (2) assigning 2 GHz MSS spectrum to parties other than ICO and TMI would require additional, lengthy rulemaking and licensing proceedings that are likely to delay service deployment for at least another five or six years, if not more.¹¹

Inmarsat itself has acknowledged that it would not launch a 2 GHz MSS satellite until 2010, if at all.¹² Globalstar, on the other hand, remarkably claims that ICO and TMI "may never deploy a 2 GHz MSS system," while Globalstar itself "has a proven and growing track record of

⁹ See 47 C.F.R. § 25.143(b)(2)(iv) (geostationary 2 GHz MSS systems must "be capable of providing [MSS] on a continuous basis throughout the 50 states, Puerto Rico, and the U.S. Virgin Islands, if technically feasible").

¹⁰ See ICO Second Reply at 3.

¹¹ See ICO Second Comments at 6-7; TMI/TerreStar Second Comments at 20.

¹² See Narrative at 27, Exhibit E to Inmarsat Petition for Declaratory Ruling, File No. SAT-PPL-20050926-00184 (Sept. 26, 2005).

success in meeting [public safety] needs.”¹³ Of course, Globalstar conveniently ignores its own history of noncompliance with the 2 GHz MSS milestones. Unlike Globalstar, ICO has a proven record of milestone compliance demonstrating its commitment to launching a 2 GHz MSS system by 2007.¹⁴ In contrast, Globalstar’s own record of milestone noncompliance raises serious doubts regarding its ability to deploy a 2 GHz MSS system in a timely manner. Even in the event that its 2 GHz MSS license is reinstated on appeal, Globalstar likely would not be required to commence service for at least another four or five years, long after ICO’s expected launch of service.

Furthermore, Globalstar attempts to mischaracterize the *2 GHz Order* by alleging that the Commission assumed that assigning additional spectrum to ICO and TMI would expedite deployment of their systems.¹⁵ As the Commission noted, however, ICO and TMI are subject to milestones requiring timely construction of their 2 GHz MSS systems, and “[i]ncreasing [their] spectrum reservations does not affect their milestone requirements.”¹⁶ Thus, contrary to Globalstar’s contention, the Commission recognized that granting additional spectrum to ICO and TMI would not necessarily expedite deployment of their 2 GHz MSS systems. Rather, the Commission simply found that, given their milestone schedules, ICO and TMI will bring the spectrum into use more quickly than other MSS operators.

¹³ Globalstar Petition at 8, 10.

¹⁴ See *2 GHz Order* ¶ 28 n.77 (finding that ICO, to date, has met its 2 GHz MSS milestones).

¹⁵ See Globalstar Petition at 9.

¹⁶ *2 GHz Order* ¶ 57

C. The Commission Properly Found That Increasing ICO's and TMI's Spectrum Assignments Will Facilitate MSS Competition

Based upon the record, the Commission properly concluded in the *2 GHz Order* that granting additional spectrum to ICO and TMI will facilitate MSS competition, and will not result in a duopoly because the relevant product market includes services offered by MSS licensees in various frequency bands and is not limited to services in the 2 GHz MSS band.¹⁷ Although Globalstar and Inmarsat argue that the Commission's competition analysis is inconsistent with its policies favoring at least three satellite competitors in a frequency band,¹⁸ they fail to challenge the Commission's conclusion that those policies are not binding with respect to the 2 GHz MSS band.¹⁹ In fact, Inmarsat itself argued, and the Commission agreed, that Section 25.157(g) of the Commission's rules, which provides a presumption favoring at least three satellite competitors in a frequency band, does not apply to the 2 GHz MSS band.²⁰

Moreover, as the expert testimony submitted in the record demonstrates, the Commission historically has defined product markets based upon the similarity of the services, rather than

¹⁷ *Id.* ¶ 33.

¹⁸ See Globalstar Petition at 10-15; Inmarsat Petition at 5-7.

¹⁹ See *2 GHz Order* ¶ 15.

²⁰ See *2 GHz Order* ¶ 13 (citing Inmarsat comments). In its Petition, Inmarsat suggests that the policies favoring at least three competitors in a frequency band are applicable to 2 GHz MSS because they were articulated in the *DIRECTV/EchoStar Order*, prior to adoption of Section 25.157(g). See Inmarsat Petition at 5 (citing *EchoStar Communications Corp.*, 17 FCC Rcd 20559 (2002) ("*DIRECTV/EchoStar Order*"). These policies, however, were first articulated in the *Satellite Licensing Reform Order*, which adopted Section 25.157(g), and not in the *DIRECTV/EchoStar Order*. See *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, ¶¶ 61-64 (2003) ("*Satellite Licensing Reform Order*"). The *DIRECTV/EchoStar Order* noted that mergers resulting in a duopoly are generally disfavored, but did not suggest that a duopoly exists whenever there are only two satellite competitors in a frequency band. See *DIRECTV/EchoStar Order* ¶¶ 99-103.

upon the frequency bands used to provide those services.²¹ For example, the Commission previously found that the relevant product market for satellite communications services includes a variety of domestic and international telecommunications services.²² Additionally, in assessing the competitive effects of an assignment of MSS licenses, the Commission viewed the services offered in North America by Globalstar, Inmarsat, Iridium, and other MSS competitors as competing within the same market, even though these services include a variety of mobile voice, data, and other services, and are offered using a number of different frequency bands.²³

Remarkably, Globalstar and Inmarsat claim that 2 GHz MSS offerings are not competitive with services in other MSS bands because 2 GHz MSS band is technically different from other MSS bands and uniquely suited for broadband services that cannot be provided readily in other MSS bands.²⁴ This claim, however, is belied by Inmarsat's recent launch of an L-band MSS satellite as part of its "Broadband Global Area Network," which reportedly will offer voice, data, and IP-based services at rates of approximately 500 kbps.²⁵ Thus, the

²¹ See Declaration of Peter Cowhey at 1-3 (Apr. 19, 2005), attached as Exh. B to TMI Second Comments (filed July 29, 2005); Bruce M. Owen, *Economic Issues Related to the Number of Firms Licensed to Use 2 GHz Spectrum for MSS Services*, at 2-4 (Aug. 12, 2005), attached as Exh. 4 to TMI Second Reply Comments (filed Aug. 15, 2005); Bruce M. Owen, *Competition and Licensing in the 2 GHz Band*, at 2-7 (Oct. 14, 2005), attached to a letter from Gregory C. Staple *et al.*, Counsel, TMI, to Marlene H. Dortch, Secretary, FCC (filed Oct. 17, 2005).

²² See *Space Station System Licensee, Inc. and Iridium Constellation LLC*, 17 FCC Rcd 2271, ¶ 33 (IB 2002).

²³ See *Motient Services Inc. and TMI Communications and Co., LP and Mobile Satellite Ventures Subsidiary LLC*, 16 FCC Rcd 20469, ¶ 24 (IB 2001).

²⁴ See Globalstar Petition at 14; Inmarsat Petition at 5-7.

²⁵ See Tom Espiner, *Inmarsat Broadband Satellite Hits Orbit*, ZDNet UK (Nov. 9, 2005), available at <http://news.zdnet.co.uk>; see also Letter from John P. Janka, Counsel, Inmarsat, to Marlene H. Dortch, Secretary, FCC, at 4 (Sept. 28, 2005).

contention that 2 GHz MSS and other MSS offerings do not belong in the same product market is untenable and not based upon marketplace reality.

Globalstar and Inmarsat argue that ICO and TMI failed to demonstrate their need for all of the available 2 GHz MSS spectrum,²⁶ but the Commission expressly found that this demonstration was unnecessary.²⁷ The Commission concluded that “any proceedings to quantify specific [spectrum] requirements would be lengthy and inherently subjective.”²⁸ The Commission further noted its long-standing policy of “rel[ying] upon a variety of other mechanisms for assigning licenses that do not require a detailed evaluation of applicants’ business judgments.”²⁹ Globalstar and Inmarsat do not challenge this long-standing policy or offer any reasons to deviate from the policy.³⁰

In view of its long-standing policy, the Commission also properly found Globalstar’s and Inmarsat’s demonstrations of spectrum need to be irrelevant.³¹ It further concluded that “to the extent that demonstrating a need for spectrum is relevant, it is at best unclear whether those

²⁶ See Globalstar Petition at 15-18; Inmarsat Petition at 11-12.

²⁷ See 2 GHz Order ¶¶ 40-41.

²⁸ *Id.* ¶ 40.

²⁹ *Id.*

³⁰ In any event, it is undisputed that ICO repeatedly has sought access to up to 2 x 15 MHz of spectrum for each 2 GHz MSS operator. See, e.g., ICO Comments, ET Docket Nos. 00-258 & 95-18 & IB Docket No. 99-81, at 15 (Oct. 22, 2001); SEC Form F-1 Registration of ICO Global Communications (Holdings) Limited, at 24 (June 12, 1998). Other 2 GHz MSS proponents also requested access to comparable amounts of spectrum, and warned that assigning a lesser amount would be “too small to permit economically viable MSS operations.” See Supplemental Comments of the ICO USA Service Group, IB Docket No. 99-81, at 4 n.7 (Feb. 18, 2000); see also Application of The Boeing Company, File No. SAT-LOA-19970926-00149, at 4 & Attachment 1 at 5 (Sept. 26, 1997); Amendment to Application of Celsat America, Inc., File No. SAT-AMD-19970925-00124, at 3 (Sept. 3, 1997).

³¹ See 2 GHz Order ¶ 56.

commenters would be able to show that they have a greater need for the spectrum at issue here than ICO and TMI.”³² In fact, Globalstar has access to 27.85 MHz of L-band and S-band MSS spectrum.³³ Additionally, by Inmarsat’s own admission, it has access to approximately 28 MHz of L-band MSS spectrum.³⁴ Thus, assigning additional 2 GHz MSS spectrum to Globalstar and Inmarsat is unlikely to achieve anything more than awarding spectrum to MSS incumbents already endowed with substantial spectrum holdings.

Furthermore, Globalstar’s complaint that the *2 GHz Order* prevents Globalstar and other U.S. licensees from obtaining access to 2 GHz MSS spectrum is baseless.³⁵ Like ICO and TMI, Globalstar and other U.S. and non-U.S. applicants had equal opportunity to acquire access to 2 GHz MSS spectrum. In fact, the Commission’s 2 GHz MSS processing round culminated in the issuance of eight authorizations to both U.S. and non-U.S. applicants, including Globalstar. Globalstar’s inability to access 2 GHz MSS spectrum is the result of its own failure to comply with the Commission’s milestone requirements, and not of the Commission’s decision in the *2 GHz Order* to grant additional spectrum to ICO and TMI. Moreover, because the Commission conditioned the grant of additional spectrum to ICO and TMI upon the outcome of Globalstar’s

³² *Id.* ¶ 41 n.115.

³³ *See Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, 19 FCC Rcd 13356, ¶¶ 1, 17 (2004).

³⁴ *See* 2 GHz MSS Solutions at 1, attached to Letter from John P. Janka, Counsel, Inmarsat, to Marlene H. Dortch, Secretary, FCC (filed Oct. 27, 2005).

³⁵ *See* Globalstar Petition at 12-13. Globalstar also alleges that the lack of any U.S. licensees in the 2 GHz MSS band “cast[s] doubt on whether the spectrum will serve the needs of national security entities.” *Id.* at 12. Globalstar, however, fails to explain how U.S. licensees are more capable of serving national security needs than non-U.S. licensees. In fact, Globalstar is no better suited to serving American interests than ICO, which is itself a U.S. company. ICO’s parent company, ICO Global Communications (Holdings) Limited (“ICO Global”), as well as those individuals and entities holding controlling interests in ICO Global, also are all U.S. companies or citizens.

petition for reconsideration of its 2 GHz MSS license cancellation,³⁶ Globalstar cannot show any harm resulting from the *2 GHz Order*.

III. THE COMMISSION FAIRLY CONSIDERED INMARSAT’S PROPOSED ALTERNATIVES AND, IN ANY EVENT, IS NOT REQUIRED TO CONSIDER ALL POSSIBLE ALTERNATIVES

Contrary to Inmarsat’s contention, the Commission fairly considered Inmarsat’s various proposed alternatives for authorizing additional licensees in the 2 GHz MSS band and expressly rejected them. Specifically, the Commission considered and discussed the various proposals to assign 2 GHz MSS spectrum to additional licensees in a new modified processing round.³⁷ It also acknowledged Inmarsat’s expression of interest in 2 GHz MSS spectrum through a petition for declaratory ruling seeking market access outside a 2 GHz MSS processing round.³⁸ The Commission nonetheless concluded that the “public interest weighs in favor of giving ICO and TMI the inputs needed to enable them to become strong MSS competitors more than it does allowing other existing service providers to expand their existing services.”³⁹

Additionally, the Commission discussed at length Inmarsat’s proposal for a comprehensive review of the 2 GHz MSS band to determine the optimal number of operators that should be permitted in the band.⁴⁰ The Commission ultimately rejected this proposal because the proposal would require an “inherently subjective” analysis and because it would be inconsistent with the Commission’s long-standing policy of avoiding spectrum assignment

³⁶ *See 2 GHz Order* ¶ 63.

³⁷ *Id.* ¶¶ 54-56.

³⁸ *Id.* ¶ 56 n.171.

³⁹ *Id.* ¶ 56.

⁴⁰ *Id.* ¶¶ 58-60.

methods that require individualized assessments of spectrum need.⁴¹ Thus, contrary to Inmarsat's contention, the Commission did not ignore Inmarsat's proposed alternatives, but rather found them to be either unworkable or not as beneficial as granting the available 2 GHz MSS spectrum to ICO and TMI.⁴² In any event, the Commission was not required to address every possible alternative proposed in the record, even if it is irrelevant or insignificant.⁴³

IV. GLOBALSTAR AND INMARSAT LACK STANDING TO OPPOSE MODIFICATION OF ICO'S AND TMI'S SPECTRUM RESERVATIONS

Neither Globalstar nor Inmarsat has demonstrated the requisite standing or filed a timely protest against the Commission's modification of ICO's and TMI's 2 GHz MSS spectrum reservations, as required by Section 316 of the Communications Act. The Commission in the 2 *GHz Order* properly decided to proceed under Section 316 modification procedures rather than by rulemaking,⁴⁴ and neither Globalstar nor Inmarsat challenged this determination. Accordingly, the procedural requirements of Section 316 are binding upon Globalstar and Inmarsat.

Section 316(a) on its face provides that a protest against a license modification may be filed by the "licensee or permittee" or by "[a]ny other licensee or permittee who believes its

⁴¹ *Id.* ¶¶ 59-60.

⁴² See *MCI Worldcom, Inc. v. FCC*, 209 F.3d 760, 766 n.6 (D.C. Cir. 2000) ("The Commission did not, as petitioners contend, ignore the probability of increased transaction costs. It simply found them insignificant compared to the competitive benefits of detariffing.").

⁴³ *Id.* at 765 ("An agency is not obliged to respond to every comment, only those that can be thought to challenge a fundamental premise."); *Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455, 468 (D.C. Cir. 1998) ("An agency must ... demonstrate the rationality of its decisionmaking by responding to those comments that are *relevant and significant*.").

⁴⁴ See 2 *GHz Order* ¶ 21.

license or permit would be modified by the proposed action.”⁴⁵ Section 316(a) further provides that the protest “shall be subject to the requirements of section 309 of this title for petitions to deny.”⁴⁶ Consistent with the requirements of Section 316(a), the *2 GHz Order* expressly noted that “[a]ny licensee or permittee who believes its license will be modified by the proposed action may also protest this action within 30 days of the release date of this Order.”⁴⁷

Despite the express language of Section 316(a) and the *2 GHz Order*, both Globalstar and Inmarsat failed to file a formal protest in compliance with the requirements of Sections 316 and Section 309.⁴⁸ Even assuming that, despite their nomenclature, the Petitions could be viewed as formal protests filed pursuant to Section 316, both Globalstar and Inmarsat neglected to demonstrate or even allege that their licenses would be “modified” by the *2 GHz Order*. The courts have held that “a license is modified for purposes of section 316 when an unconditional right conferred by the license is substantially affected.”⁴⁹ For example, a license is “modified” if the Commission “grants a license to another [party] on that [same] frequency.”⁵⁰ A license also is “modified” if a license grant “create[s] objectionable electrical interference to an existing licensee and the existing licensee is protected by Commission policy or regulation from such

⁴⁵ 47 U.S.C. § 316(a)(1), (2).

⁴⁶ *Id.* § 316(a)(3). Section 309(d), among other things, requires petitions to deny to be served upon the license applicant and to “contain specific allegations of fact sufficient to show that the petitioner is a party in interest.” 47 U.S.C. § 309(d).

⁴⁷ *2 GHz Order* ¶ 68.

⁴⁸ Specifically, contrary to the requirements of Section 309(d), the Petitions failed to “contain specific allegations of fact sufficient to show that the petitioner is a party in interest.” 47 U.S.C. § 309(d). Moreover, the Globalstar Petition apparently was not served upon either ICO or TMI, as required by Section 309(d).

⁴⁹ *See P&R Temmer v. FCC*, 743 F.2d 918, 927-28 (D.C. Cir. 1984).

⁵⁰ *Id.* at 927 (citing *FCC v. Nat’l Broadcasting Co.*, 319 U.S. 239 (1943); *Western Broadcasting Co. v. FCC*, 674 F.2d 44 (D.C. Cir. 1982)).

interference.”⁵¹ A party that cannot demonstrate that its license would be “modified” thus lacks standing to protest the Commission action.⁵²

The Commission’s modification of ICO’s and TMI’s 2 GHz MSS spectrum reservations does not confer rights to any spectrum already assigned to another licensee. Globalstar and Inmarsat are not licensed to use any 2 GHz MSS spectrum. Moreover, they do not suggest that the modification will cause any harmful interference to their licensed services. Thus, the *2 GHz Order* does not “substantially affect,” or “modify,” any license rights that either Globalstar or Inmarsat holds. Globalstar and Inmarsat therefore lack standing to protest the modification of ICO’s and TMI’s spectrum reservations, and their Petitions should be rejected on this ground alone.

V. CONCLUSION

Based upon the foregoing, ICO urges the Commission to reject the Petitions and reaffirm the *2 GHz Order*.

Respectfully submitted,

NEW ICO SATELLITE SERVICES G.P.

/s/ Suzanne Hutchings Malloy
Suzanne Hutchings Malloy
Senior Regulatory Counsel
815 Connecticut Avenue, N.W.
Suite 610
Washington, D.C. 20006

Cheryl A. Tritt
Phuong N. Pham
Morrison & Foerster LLP
2000 Pennsylvania Ave., NW, Suite 5500
Washington, D.C. 20006

Its Attorneys

February 16, 2006

⁵¹ See *Western Broadcasting Co.*, 674 F.2d at 49 (citation omitted).

⁵² See *National Broadcasting Co. v. FCC*, 362 F.2d 946, 954 (D.C. Cir. 1966) (“an indirect modification finding ... under Section 316” is “tantamount to a standing finding”).

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2006, I caused to be served a copy of the foregoing **Opposition to Petitions for Reconsideration** by first-class U.S. mail or, as indicated by (*) below, by electronic mail upon the following:

Cassandra Thomas*
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: Cassandra.Thomas@fcc.gov

Fern Jarmulnek*
Deputy Chief, Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: Fern.Jarmulnek@fcc.gov

William Bell*
Deputy Chief, Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: William.Bell@fcc.gov

Karl Kensinger*
Associate Division Chief, Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: Karl.Kensinger@fcc.gov

Richard S. Woods
William F. Adler
Globalstar LLC
461 Milpitas Blvd.
Milpitas, CA 95035

William T. Lake
Wilmer Cutler Pickering Hale and Dorr LLP
2445 M Street, NW
Washington, DC 20037

Counsel for Globalstar LLC

Matthew S. DelNero
Kurt A. Wimmer
Jonathan D. Blake
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004-2401

Gregory C. Staple
Vinson & Elkins
1455 Pennsylvania Avenue, NW
Washington, D.C. 20004-1008

*Counsel for TMI Communications and
Company Limited Partnership*

Counsel for TerreStar Networks, Inc.

Randy S. Segal
Senior Vice President, General Counsel &
Secretary
Mobile Satellite Ventures Subsidiary LLC
10802 Parkridge Boulevard
Reston, VA 20191

R. Edward Price
Robert A. Mazer, Esq.
Vinson & Elkins, LLP
1455 Pennsylvania Avenue, NW
Washington, D.C. 20004-1008

Counsel for SkyTerra Communications, Inc.

Dale Branlund
Chief Technical Officer
BRN Phoenix, Inc.
329 N. Bernardo Avenue
Mountain View, CA 94043

John P. Janka
Jeffrey A. Marks
Latham & Watkins, LLP
555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004

*Counsel for Inmarsat Ventures Limited and
Inmarsat Global Limited*

Loren Leman
Chairman
Aerospace States Association
2200 Wilson Boulevard
Suite 102-249
Arlington, VA 22209

Thomas Clemons
President
Alaska Association Of Chiefs Of Police
P.O. Box 167
Seward, AK 99664

Nils Rydbeck, MSEE, PhD.,
Professor
Rydbeck Consulting
943 Flagship Drive
Summerland Key, FL 33042

Kelin N. Kasler
Amy E. Bender
Jennifer D. Hindin
Carl R. Frank
Wiley Rein & Fielding
1776 K Street, NW
Washington, D.C. 20006
Counsel for Sirius Satellite Radio, Inc.

Thomas J. Sugrue
Robert A. Calaff
T-Mobile USA, Inc.
401 9th Street, NW
Suite 550
Washington, D.C. 20004

Carol L. Tacker
David G. Richards
J.R. Carbonell
Cingular Wireless, LLC
5565 Glenridge Connector - Suite 1700
Atlanta, GA 30342

Dennis J. Burnett
Vice President
EADS North America Defense Company 1616
North Fort Myer Drive
Suite 1500
Arlington, VA 22209

Peter Pitsch
Marjorie J. Dickman
Andrew Tang
Intel Corporation
1634 I Street, NW - Suite 300
Washington, D.C. 20006

Oliver Badard
Vice President
Alcatel North America
11600 American Dream Way
9th Floor
Reston, VA 20193

Chief Dan Flynn
Savannah Chatham Metropolitan Police
PO Box 8032
Savannah, GA 31412

Gerald C. Musarra
Vice President, Trade & Regulatory Affairs
Lockheed Martin Corporation
1500 Crystal Drive
Suite 300
Arlington, VA 22202

Carl Hofferberth
Microwave Circuits, Inc.
1611 Kemper Street
Lynchburg, VA 24501

David A. Cavossa
Executive Director
Satellite Industry Association
1730 M Street, NW
Suite 600
Washington, D.C. 20036

Fred Fellmeth, Esq.
777 American Drive
Bensalem, PA 19020
Counsel for Total RF Marketing, Inc.

Christopher Guttman-McCabe
CTIA - The Wireless Association
1400 16th Street, NW
Suite 600
Washington, D.C. 20036

Wayne V. Black
Keller and Heckman, LLP
1001 G Street, NW
Suite 500 West
Washington, D.C. 20001
Counsel for American Petroleum Institute

Bruce A. Olcott
Joseph P. Markoski
Squire, Sanders & Dempsey LLP
1201 Pennsylvania Avenue, NW
PO Box 407
Washington, D.C. 20044-0407
Counsel for The Boeing Company

Henry Ruhwiedel
Ruhwiedel
5317 W 133rd
Crown Point, IN 46307

Raymond G. Bender, Jr.
John S. Logan
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, D.C. 20036
Counsel for Hughes Network Systems, LLC

Laurence D. Atlas
Loral Space & Communications
1421 Jefferson Davis Highway
Suite 810
Arlington, VA 22202-3290

George Y. Wheeler, Esq.
Holland & Knight, LLP
2099 Pennsylvania Avenue, NW
Suite 100
Washington, D.C. 20006
Counsel for United States Cellular Corporation

Larry Hatch
Advanced Manufacturing Technology, Inc.
28 Millrace Drive
Lynchburg, VA 24501

Chief Joseph G. Estey
President
International Association of Chiefs of Police
422 Winthrop Drive
Ithaca, NY 14850-1739

Christopher D. Imlay
General Counsel
Society of Broadcast Engineers, Inc.
c/o Booth, Freret, Imlay & Tepper
14356 Cape May Road
Silver Spring, MD 20904

Sheriff James A. Karnes President
Major County Sheriff's Association
422 Winthrop Drive
Ithaca, NY 14850-1739

Bert W. King
24 Jones Avenue
Greenville, SC 29601-4332

William K. Coulter, Esq.
Coudert--Brothers, LLP
1627 I Street, NW
Suite 1200
Washington, D.C. 20006
Counsel for Mobile Satellite Users Association

Chief Harold L. Hurt
President
Major Cities Chiefs Association
422 Winthrop Drive
Ithaca, NY 14850-1739

Aarti Holla-Maini
Secretary General
European Satellite Operators Association
Brussels
BELGIUM, DC 01040
By International Mail

Sheriff Ted Sexton
President
National Sheriffs' Association
422 Winthrop Drive
Ithaca, NY 14850-1739

Robert S. Foosaner
Lawrence R. Krevor
Trey Hanbury
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20191

Kumar Singarajah
Chairman
Satellite Action Plan Regulatory Group
Brussels
BELGIUM, DC 01040
By International Mail

Lee Cobb
Executive Director
Virginia's Region 2000 Economic
Development Council
PO Box 937
Lynchburg, VA 24505

Lester B. Baird, Sr.
County Administrator
Hendry County, Florida
P.O. Box 2340
LaBelle, FL 33975-2340

Chief A.M. Jacocks, Jr.
Chief of Police - Building 11
Municipal Center
2509 Princess Anne Road
Virginia Beach, VA 23456

Carlton Stallings
President
Georgia Fraternal Order of Police
772 Maddox Drive
Suite 104
Ellijay, GA 30540

Jill M. Lyon
Vice President and General Counsel
United Telecom Council
1901 Pennsylvania Avenue, NW - 5th
Floor
Washington, D.C. 20006

Kenneth L. Morckel
Director
Ohio Department of Public Safety
1970 West Broad Street
P.O. Box 182081
Columbus, OH 43218-2081

Cecilia Bernier
Town Manager
P.O. Drawer 669
Windermere, FL 34786

Sheriff Robert J. McCabe
Norfolk Sheriff's Office
811 E. City Hall Avenue
Norfolk, VA 23510

/s/ Theresa Rollins
Theresa L. Rollins